

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. 2:09-CR-638
	§	
RAFAEL FELLOVE	§	

ORDER

Rafael Fellove filed a third motion requesting a reduction in his sentence pursuant to 18 U.S.C. § 3582(c) and Amendment 782 to the sentencing guidelines. D.E. 79. The Court already granted his first motion for a sentence reduction by reducing his sentence to 120 months. The Court construes Fellove's second motion to be a motion for reconsideration.

Fellove was sentenced to 121 months in the Bureau of Prisons in 2009 after a jury convicted him of possession with intent to distribute 1619.86 kilograms of marijuana. D.E. 38. The statutory minimum sentence for that quantity of marijuana is ten years pursuant to 21 U.S.C. § 841(b)(1)(A). Fellove's sentencing guideline range was 121 to 151 months imprisonment. The Court sentenced him to a low end guideline sentence of 121 months.


"A defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission" may apply for a reduction in his sentence if the amendment applies retroactively. 18 U.S.C. §3582(c)(2); *see also Freeman v. United States*, 131 S.Ct. 2685, 2690-91 (2011) (reciting standard for sentence modifications); *Dillon v. United States*, 560 U.S. 817, 824-25 (2010). Amendment 782 became retroactive on November 1, 2014. U.S.S.G. § 1B1.10(d). Fellove seeks a reduction of his sentence to 97 months based upon Amendment 782. Although Amendment 782 modified the drug quantity table which meant Fellove was eligible for a sentence reduction, this Court did not

have authority to reduce his sentence below the statutory minimum sentence which was unchanged by Congress.

CONCLUSION

The Court DENIES Fellove's construed motion for reconsideration. D.E. 79.

SIGNED and ORDERED this 24th day of April, 2015.



Janis Graham Jack
Senior United States District Judge